

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 78 OF 2022

SANDEEP JUGALKISHOR KARWA

VERSUS

MILIND PANDITRAO SARODE

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Advocate for Appellants : Mr. Sikchi Aditya N.

Advocate for Respondent : Mr. Navandar Gopal C.

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CORAM : KISHORE C. SANT, J.

DATE : 20th DECEMBER 2022.

Per Court :

Heard.

1. The applicant seeks leave to file an appeal challenging the judgment and order passed by the learned Judicial Magistrate First Class, Aurangabad in S.C.C. No.2823/2017, thereby dismissing the complaint filed by him under Section 138 of the Negotiable Instruments Act. The sole reason given while dismissing the complaint, is that the notice of demand which was issued to the accused, was returned unserved with an endorsement as address is insufficient and thereafter another endorsement showing that he was making enquiry. However,

after seven days, he returned back an envelope. The main ground raised in the application is that the address on the envelope is the same as that was given by the accused himself in the agreement dated 08.09.2016, while taking hand loan. Thus, learned Advocate submits that in view of Section 114 of the Indian Evidence Act and in view of Section 27 of General Clauses Act, notice needs to be considered served on the accused. The learned Advocate for the applicant invited attention to the address given in the complaint i.e. of the office address of the accused. However he has not denied the residential address of the accused as written on the envelope. Learned Advocate for the applicant relies upon the judgment reported in (2007) 6 SCC 555 in the case of **C.C. Alavi Haji Vs. Palapetty Muhammad and another.**

2. Considering the above position, a case is made out to at-least grant leave to file against acquittal. Thus, the application is allowed. Office to register the application memo as appeal.

[KISHORE C. SANT, J.]

Najeeb.